

Remarks

This amendment is in response to the Restriction Requirement dated August 17, 2005. By this amendment, applicant is amending claim 41 to correct a minor informality contained therein. Applicant is also amending claims 53 and 56 to depend from claim 36. Further, applicant is adding new dependent claims 67-70, which are supported by the application as filed at, for example, page 11, lines 1-7, and page 15, lines 2-7. Applicant is also adding new dependent claim 71, which is supported by the application as filed at, for example, page 4, lines 7-9, and new dependent claim 72, which is supported by the application as filed at, for example, page 18, lines 9-14. With entry of this amendment, claims 30-72 will be pending.

The Species Restriction

The Examiner contends that the pending claims can be separated into two groups that are patentably distinct from one another and that are related as “process and apparatus for its practice.” (Office action at pg. 2.) Specifically, the Examiner identifies the following groups: Group I (method claims 30-35 and 53-58) and Group II (apparatus claims 36-52 and 59-66). (*Id.*) The Examiner further contends that Group II includes three species: Species I (claims 36-52), Species II (claims 59-64), and Species III (claims 65-66). (*Id.* at pg. 3.) The Examiner therefore requests that one of the species be elected if the Group II claims are elected for examination. (*Id.* at pg. 3.)

Applicant provisionally elects Group II and Species I (claims 36-52) and traverses the restriction in part. Applicant notes that new claims 67-72 depend from claim 36 and requests that the new claims be examined with claims 36-52.

Method Claims 53-58 Are Proper Dependent Claims that Should Be Examined with Claims 36-52

By this amendment, applicant is amending method claims 53 and 56 to recite their dependency from independent claim 36. Amended claim 53 recites in relevant part a method comprising “deploying in the lumen the device of claim 36,” and amended claim 56 recites in relevant part a method comprising “deploying the device of claim 36 within the lumen of the hollow organ.”

In accordance with 35 U.S.C. § 112, ¶ 4, dependent claims 53 and 56 contain a reference to a claim previously set forth and specify a further limitation of the subject matter. Further, by reciting “the device of claim 36,” dependent claims 53 and 56 include every limitation of claim 36. Accordingly, dependent claims 53 and 56 are proper dependent claims. (*See* MPEP 608.01(n).III.) Further, the fact that claims 53 and 56 recite different statutory classes does not make the dependent claims improper. (*See id.*)

The Examiner has not shown that the product and process of using the product are distinct as required by MPEP 806.05(h). The Examiner suggests that “[i]n this case the method could involve treat[ment] anywhere in a body lumen [using] any type of energy application such as microwave, light, ultrasound” and that “the device is specific to energy application through [a] deployable RF electrode to any substance.” (Office action at pg. 2.) As explained above, however, method claims 53 and 56 expressly recite “the device of claim 36.” Thus, the particular methods claimed in claims 53 and 56 use an electrode connected to “a source of radiofrequency energy” as recited in claim 36. Accordingly, the methods of claims 53 and 56 cannot be practiced with another materially different product as required for proper restriction under MPEP 806.05(h). For at least these reasons, Applicant requests that the Examiner’s restriction requirement as applied to method claims 53 and 56 be withdrawn.

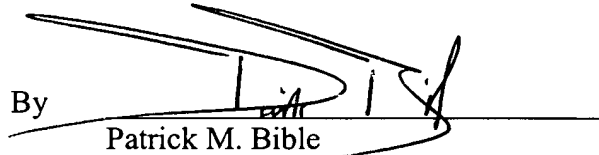
Claims 54 and 55 are dependent from method claim 53 and claims 57 and 58 are dependent from claim 56. Accordingly, for at least the reasons recited above, applicant also requests that the Examiner’s restriction requirement as applied to methods claims 54, 55, 57, and 58 be withdrawn.

Conclusion

With entry of this amendment, the application is believed to be ready for examination and such action is respectfully requested. If there are any issues remaining concerning this matter, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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